



General Assembly

Substitute Bill No. 5053

February Session, 2010

* ____HB05053BA____031210____ *

AN ACT CONCERNING TRANSPARENCY AND DISCLOSURE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2011*) (a) As used in this
2 section, "private investment fund" means any investment company, as
3 defined in Section 3(a)(1) of the Investment Company Act of 1940, (1)
4 that claims an exemption under Section 3(c)(1) or Section 3(c)(7) of the
5 Investment Company Act of 1940; (2) whose offering of securities is
6 exempt under the private offering safe harbor criteria in Rule 506 of
7 Regulation D of the Securities Act; (3) that offers or sells securities in
8 this state or is located in this state; and (4) that meets any other criteria
9 as may be established by the Banking Commissioner. A private
10 investment fund is located in this state if such fund has an office in this
11 state where employees regularly conduct business on behalf of the
12 private investment fund.

13 (b) Any investment adviser to a private investment fund, regardless
14 of whether such investment adviser is registered with the United
15 States Securities and Exchange Commission, shall comply with the
16 disclosure requirements of Rule 204-3 under the Investment Advisers
17 Act of 1940, provided nothing in this subsection shall require the
18 disclosure of any information other than material conflicts of interest
19 of the investment adviser. In the event that federal regulations or
20 changes to the Investment Advisers Act of 1940, resulting in the

21 regulation of investment advisers to private investment funds, are
22 enacted on or before December 31, 2010, then no private investment
23 fund or investment adviser to a private investment fund shall be
24 required to comply with the provisions of this subsection.

25 Sec. 2. Section 36b-3 of the general statutes is repealed and the
26 following is substituted in lieu thereof (*Effective January 1, 2011*):

27 As used in sections 36b-2 to 36b-33, inclusive, and section 1 of this
28 act, unless the context otherwise requires:

29 (1) "Agent" means any individual, other than a broker-dealer, who
30 represents a broker-dealer or issuer in effecting or attempting to effect
31 purchases or sales of securities. "Agent" does not include an individual
32 who represents an issuer in (A) effecting transactions in a security
33 exempted by subdivision (1), (2), (3), (4), (6), (9), (10), (11) or (22) of
34 subsection (a) of section 36b-21, (B) effecting transactions exempted by
35 subsection (b) of section 36b-21, except for transactions exempted by
36 subdivisions (10), (13) or (14) of said subsection, (C) effecting
37 transactions with existing employees, partners or directors of the
38 issuer if no commission or other remuneration is paid or given directly
39 or indirectly for soliciting any person in this state, or (D) effecting
40 transactions in any covered security, except for covered securities
41 within the meaning of Sections 18(b)(2) or 18(b)(4)(D) of the Securities
42 Act of 1933. "Agent" does not include such other persons not within
43 the intent of this subdivision as the commissioner may by regulation or
44 order determine. A general partner, officer or director of a broker-
45 dealer or issuer, or a person occupying a similar status or performing
46 similar functions, is an agent only if such person otherwise comes
47 within this definition and any compensation that such person receives
48 is directly or indirectly related to purchases or sales of securities.

49 (2) "Associated person" has the meaning given to that term in
50 Section 3(a)(21) of the Securities Exchange Act of 1934.

51 (3) "Blank check company" means any company that (A) devotes
52 substantially all of its efforts to establishing a new business in which

53 planned principal operations have not commenced or, that has
54 commenced planned principal operations, but has not derived
55 significant revenue from such operations; and (B) has no specific
56 business plan or purpose or has indicated that its business plan is to
57 engage in a merger or acquisition with an unidentified company or
58 companies, or other entity or person.

59 (4) "Branch office" means any location other than the main office at
60 which an agent or investment adviser agent regularly conducts
61 business on behalf of a broker-dealer or investment adviser, or any
62 location that is held out as such, excluding: (A) Any location that is
63 established solely for customer service or back-office-type functions
64 where no sales activities are conducted and that is not held out to the
65 public as a branch office, (B) any location that is the agent's or
66 investment adviser agent's primary residence, provided (i) only agents
67 or investment adviser agents who reside at the location and are
68 members of the same immediate family conduct business at the
69 location, (ii) the location is not held out to the public as an office and
70 the agent or investment adviser agent does not meet with customers at
71 the location, (iii) neither customer funds nor securities are handled at
72 that location, (iv) the agent or investment adviser agent is assigned to a
73 designated branch office, and such designated branch office is reflected
74 on all business cards, stationery, advertisements and other
75 communications to the public by such agent or investment adviser
76 agent, (v) the agent's or investment adviser agent's correspondence
77 and communications with the public are subject to the supervision of
78 the broker-dealer or investment adviser with which such agent or
79 investment adviser agent is associated, (vi) electronic communications,
80 including e-mail, are made through the electronic system of the broker-
81 dealer or investment adviser, (vii) all orders for securities are entered
82 through the designated branch office or an electronic system
83 established by a broker-dealer that is reviewable at the branch office,
84 (viii) written supervisory procedures pertaining to supervision of
85 activities conducted at the residence are maintained by the broker-
86 dealer or investment adviser, and (ix) a list of the residence locations is

87 maintained by the broker-dealer or investment adviser, (C) any
88 location, other than a primary residence, that is used for securities or
89 investment advisory business for less than thirty business days in any
90 one calendar year, provided the broker-dealer or investment adviser
91 complies with the provisions of subparagraph (B)(ii), (iii), (iv), (v), (vi),
92 (vii) and (viii) of this subdivision, (D) any office of convenience, where
93 associated persons occasionally and exclusively by appointment meet
94 with customers, which is not held out to the public as an office, (E) any
95 location that is used primarily to engage in nonsecurities activities and
96 from which the agent or investment adviser agent effects no more than
97 twenty-five securities transactions in any one calendar year, provided
98 any advertisement or sales literature identifying such location also sets
99 forth the address and telephone number of the location from which the
100 agent or investment adviser agent conducting business at the
101 nonbranch locations is directly supervised, (F) the floor of a registered
102 national securities exchange where a broker-dealer conducts a direct
103 access business with public customers, (G) a temporary location
104 established in response to the implementation of a business continuity
105 plan, or (H) any other location not within the intent of this subdivision
106 as the commissioner may determine. As used in this subdivision, the
107 term "business day" does not include any partial business day,
108 provided the agent or investment adviser agent spends at least four
109 hours on such day at the designated branch office of such agent or
110 investment adviser agent during the hours that such office is normally
111 open for business.

112 (5) "Broker-dealer" means any person engaged in the business of
113 effecting transactions in securities for the account of others or for such
114 person's own account. "Broker-dealer" does not include (A) an agent,
115 (B) an issuer, (C) a bank, as defined in Section 3(a)(6) of the Securities
116 Exchange Act of 1934, when conducting activities that would except it
117 from the definitions of "broker" or "dealer" under Sections 3(a)(4) or
118 3(a)(5) of the Securities Exchange Act of 1934, (D) a person who has no
119 place of business in this state if such person effects transactions in this
120 state exclusively with or through (i) the issuers of the securities

121 involved in the transactions, (ii) other broker-dealers, or (iii) a bank
122 and trust company, a national banking association, a savings bank, a
123 savings and loan association, a federal savings bank, a federal savings
124 and loan association, a credit union, a federal credit union, a trust
125 company, an insurance company, an investment company as defined
126 in the Investment Company Act of 1940, a pension or profit-sharing
127 trust, or other financial institution or institutional buyer, whether
128 acting for itself or as trustee, or (E) such other persons not within the
129 intent of this subdivision as the commissioner may by regulation or
130 order determine.

131 (6) "Commissioner" means the Banking Commissioner or any
132 person appointed or designated by the Banking Commissioner to
133 administer sections 36b-2 to 36b-33, inclusive.

134 (7) "Covered security" has the meaning given to that term in Section
135 18(b) of the Securities Act of 1933.

136 (8) "Fraud", "deceit" and "defraud" are not limited to common-law
137 deceit.

138 (9) "Guaranteed" means guaranteed as to payment of principal,
139 interest or dividends.

140 (10) "International banking institution" means an international
141 financial institution, as defined in 22 USC 262r, as from time to time
142 amended, of which the United States is a member and whose securities
143 are exempt from registration under the Securities Act of 1933.

144 (11) "Investment adviser" means any person who, for compensation,
145 engages in the business of advising others, either directly or through
146 publications or writings, as to the value of securities or as to the
147 advisability of investing in, purchasing or selling securities, or who, for
148 compensation and as a part of a regular business, issues or
149 promulgates analyses or reports concerning securities. "Investment
150 adviser" does not include (A) an investment adviser agent; (B) a bank,
151 as defined in Section 202(a)(2) of the Investment Advisers Act of 1940,

152 or a bank holding company, as defined in the Bank Holding Company
153 Act of 1956, that is excepted from the definition of "investment
154 adviser" in Section 202(a)(11) of the Investment Advisers Act of 1940;
155 (C) a lawyer, accountant, engineer, or teacher whose performance of
156 these services is solely incidental to the practice of such person's
157 profession; (D) a broker-dealer whose performance of these services is
158 solely incidental to the conduct of such person's business as a broker-
159 dealer and who receives no special compensation for them; (E) a
160 publisher of any bona fide newspaper, news magazine, or business or
161 financial publication of general, regular, and paid circulation; (F) a
162 person whose advice, analyses or reports relate only to securities
163 exempted by subdivision (1) of subsection (a) of section 36b-21; (G) any
164 insurance company under the supervision of the Insurance
165 Commissioner or any affiliate thereof, as defined in subsection (b) of
166 section 38a-129, when providing services to separate accounts of that
167 insurance company or registered investment companies all of whose
168 shares are owned by such insurance company or its insurance
169 company affiliates or by the separate accounts of that insurance
170 company or its insurance company affiliates; and (H) such other
171 persons not within the intent of this subdivision as the commissioner
172 may by regulation or order designate.

173 (12) (A) "Investment adviser agent" includes (i) any individual,
174 including an officer, partner or director of an investment adviser, or an
175 individual occupying a similar status or performing similar functions,
176 employed, appointed or authorized by or associated with an
177 investment adviser to solicit business from any person for such
178 investment adviser in this state and who receives compensation or
179 other remuneration, directly or indirectly, for such solicitation; or (ii)
180 any partner, officer, or director of an investment adviser, or an
181 individual occupying a similar status or performing similar functions,
182 or other individual employed, appointed, or authorized by or
183 associated with an investment adviser, who makes any
184 recommendation or otherwise renders advice regarding securities to
185 clients and who receives compensation or other remuneration, directly

186 or indirectly, for such advisory services.

187 (B) "Investment adviser agent" does not include an individual
188 employed, appointed or authorized by, associated with or acting on
189 behalf of an investment adviser exempt from registration under
190 subdivision (1) or (2) of subsection (e) of section 36b-6, who is a
191 "supervised person", as defined in Section 202(a)(25) of the Investment
192 Advisers Act of 1940, unless such supervised person is an "investment
193 adviser representative", as defined in Securities and Exchange
194 Commission Rule 203A-3, 17 CFR 275.203A-3.

195 (C) "Investment adviser agent" does not include such other
196 individuals not within the intent of this subdivision as the
197 commissioner may by regulation or order designate.

198 (13) "Issuer" means any person who issues or proposes to issue any
199 security; except that (A) with respect to a certificate of deposit, a
200 voting-trust certificate, or a collateral-trust certificate, or with respect
201 to a certificate of interest or a share in an unincorporated investment
202 trust not having a board of directors or persons performing similar
203 functions or of the fixed, restricted management, or unit type, "issuer"
204 means any person performing the acts and assuming the duties of
205 depositor or manager pursuant to the provisions of the trust or other
206 agreement or instrument under which the security is issued; (B) with
207 respect to an equipment trust certificate or similar security serving the
208 same purpose, "issuer" means any person who uses or will use the
209 property, any person to whom the property or equipment is or will be
210 leased or conditionally sold or any person who is otherwise
211 contractually responsible for assuring payment of the certificate; and
212 (C) with respect to a fractional undivided interest in oil, gas or other
213 mineral leases or in payments out of production under a lease, right or
214 royalty, "issuer" means any owner of an interest in the lease or in
215 payments out of production under a lease, right or royalty, whether
216 whole or fractional, who creates fractional interests for the purpose of
217 sale.

218 (14) "Nonissuer" means not directly or indirectly for the benefit of
219 the issuer.

220 (15) "Person" means an individual, a corporation, a limited liability
221 company, a partnership, a limited partnership, a limited liability
222 partnership, an association, a joint-stock company, a trust where the
223 interests of the beneficiaries are evidenced by a security, an
224 unincorporated organization, a government or a political subdivision
225 of a government.

226 (16) (A) "Sale" or "sell" includes every contract of sale of, contract to
227 sell, or disposition of, a security or interest in a security for value. (B)
228 "Offer" or "offer to sell" includes every attempt or offer to dispose of, or
229 solicitation of an offer to buy, a security or interest in a security for
230 value. (C) Any security given or delivered with, or as a bonus on
231 account of, any purchase of securities or any other thing shall be
232 conclusively presumed to constitute a part of the subject of such
233 purchase and to have been sold for value. (D) Nothing in this
234 subdivision shall limit or diminish the full meaning of the terms "sale",
235 "sell", "offer" or "offer to sell" as construed by the courts of this state.
236 (E) A purported gift of assessable stock is considered to involve an
237 offer and sale. (F) Every sale or offer of a warrant or right to purchase
238 or subscribe to another security of the same or another issuer, as well
239 as every sale or offer of a security which gives the holder a present or
240 future right or privilege to convert into another security of the same or
241 another issuer, is considered to include an offer of the other security.
242 (G) The terms defined in this subdivision do not include: (i) Any bona
243 fide pledge or loan; (ii) any stock dividend, whether the corporation
244 distributing the dividend is the issuer of the stock or not, if nothing of
245 value is given by stockholders for the dividend other than the
246 surrender of a right to a cash or property dividend when each
247 stockholder may elect to take the dividend in cash or property or in
248 stock; (iii) any act incident to a class vote by security holders on a
249 merger, exchange of securities for securities, consolidation,
250 reclassification of securities, or sale of assets in consideration of the
251 issuance of securities or securities and cash of another person other

252 than an individual; or (iv) any security which is issued in exchange for
253 one or more bona fide outstanding securities, claims or property
254 interests, or partly in such exchange and partly for cash, where the
255 terms and conditions of such issuance and exchange are approved by
256 any state or federal court.

257 (17) "Securities Act of 1933", "Securities Exchange Act of 1934",
258 "Public Utility Holding Company Act of 1935", "Investment Advisers
259 Act of 1940" and "Investment Company Act of 1940" mean the federal
260 statutes of those names, as from time to time amended.

261 (18) "Securities and Exchange Commission" means the United States
262 Securities and Exchange Commission.

263 (19) "Security" means any note, stock, treasury stock, security future,
264 bond, debenture, evidence of indebtedness, certificate of interest or
265 participation in any profit-sharing agreement, interests of limited
266 partners in a limited partnership, collateral-trust certificate,
267 preorganization certificate or subscription, transferable share,
268 investment contract, voting-trust certificate, certificate of deposit for a
269 security, fractional undivided interest in oil, gas or other mineral
270 rights, put, call, straddle, option, or privilege on any security or group
271 or index of securities, including any interest in or based on the value of
272 such security, group or index, put, call, straddle, option or privilege
273 entered into on a national securities exchange relating to foreign
274 currency, or, in general, any interest or instrument commonly known
275 as a "security", or any certificate of interest or participation in,
276 temporary or interim certificate for, receipt for, guarantee of, or
277 warrant or right to subscribe to or purchase, any of the foregoing.
278 "Security" includes (A) a certificated and an uncertificated security,
279 and (B) as an "investment contract", an interest in a limited liability
280 company or limited liability partnership, but does not include any
281 insurance or endowment policy or annuity contract issued by an
282 insurance company that is subject to regulation by the Insurance
283 Commissioner.

284 (20) "Self-regulatory organization" means a national securities
285 exchange, a national securities association of broker-dealers or a
286 clearing agency registered under the Securities Exchange Act of 1934
287 or the Municipal Securities Rulemaking Board established under the
288 Securities Exchange Act of 1934.

289 (21) "Shell company" or "dormant company" means any company
290 which does not pursue nor has the financial capacity to pursue a
291 business plan or purpose.

292 (22) "State" means any state, territory or possession of the United
293 States, the District of Columbia and Puerto Rico.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2011</i>	New section
Sec. 2	<i>January 1, 2011</i>	36b-3

BA *Joint Favorable Subst.*